

SOUTH HAMS DISTRICT COUNCIL

NAME OF COMMITTEE	Audit Committee
DATE	5 June 2014
REPORT TITLE	REVISION OF THE CONTRACT PROCEDURE RULES
Report of	S.151 Officer Monitoring Officer Chief Internal Auditor
WARDS AFFECTED	All/Corporate

Summary of report:

The purpose of this report is to allow the Audit Committee to carry out an overview of the updated Contract Procedure Rules to enable them to recommend adoption to the Council of the document and the amended rules surrounding Exemptions.

This covering report carries a summary of the main changes proposed, and the draft updated Contract Procedure Rules appear at Appendix A. All changes in the Appendix when compared with the previous version are highlighted in red.

Financial implications:

None, within existing budgets.

RECOMMENDATIONS:

That the Audit Committee review the updated version of the Council's Contract Procedure Rules (Appendix A) and RECOMMEND THAT COUNCIL approve the document and its inclusion in the Council's Constitution.

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1. BACKGROUND

- 1.1 The internal audit managers of South Hams and West Devon (SHDC and WDBC) and Teignbridge District Councils (TDC), the Shared *Corporate Procurement Officer*, the Monitoring Officer and Contract Solicitor, have previously worked together to deliver a set of Contract Procedure Rules, for adoption by each of the Councils.
- 1.2 This collaboration culminated in the presentation of the Contract Procedure Rules to the Council by the Audit Committee in December 2007, June 2010 and September 2011.
- 1.3 The previous versions June 2010/September 2011 were based on a model supplied free of charge by CIPFA tailored to local circumstances. The key limits and rules were aligned between South Hams, West Devon and Teignbridge Councils as far as was practical. This approach has continued.

2. THE REVISED CONTRACT PROCEDURE RULES

- 2.1 The Contract Procedure Rules amended for June 2014 have been drafted and are attached at Appendix A. Any changes to the September 2011 document are highlighted in a **red typeface**.

Key Changes in the June 2014 Contract Procedure Rules

- 2.2 The Key changes for the 2014 are as follows:

- Paragraphs 3.6 and 3.11: Changes to the Exemption Rules, adding the *Corporate Procurement Officer* as formal contact;
- Paragraph 3.12: Rules on In-house or Quasi In-house Arrangements;
- Paragraph 7.1.1: Inclusion of a supplier from within the Council's boundaries;
- Paragraph 7.3: Enhanced guidance on the use of Framework Agreements;
- Paragraph 7.4: Introduction of Dynamic Purchasing System (similar to Framework Agreements but with the opportunity to add suppliers during the life of the agreement);
- Paragraph 8.1: Enhanced competition requirements including changes to the limits for quotation and tendering, and rules relating to shared procurement;
- Paragraph 8.3: Reference to HMRC guidelines in relation to checks on the self employed status of consultants;
- Paragraph 10.1: Introduction of 'Selection Criteria' in addition to Award Criteria';
- Paragraph 23: New rules covering 'State Aid'; and

- Paragraph 24: New rules covering 'Development Agreements'.

2.3 The proposed changes to these rules have been made with regard to the progress made on the T18 Transformation Programme as it is at the time of writing the report. However, as the Programme moves into the implementation phase, and roles and responsibilities become clearer, it is highly likely that a further update will be necessary. In addition the new EU Directives being incorporated into UK legislation may also trigger an update (expected in the second half of 2014).

3. LEGAL IMPLICATIONS

3.1 It is important that the Contract Procedure Rules are reviewed regularly to make sure that they are up to date, as the procurement environment is lively.

3.2 With all services are to be shared with West Devon, and the Procurement Officer shared with Teignbridge, it has become critical that there are no differences between the Rules operating in each Council. With officers often under pressure it would be too easy to make a mistake and use the wrong Rules, with potentially serious consequences in terms of procurement impropriety, liability to disappointed or successful bidders, and consequent loss of reputation and confidence. Updating the Rules and then training relevant officers about the changes is a sensible precaution.

4. FINANCIAL IMPLICATIONS

4.1 None, within existing budgets.

5. RISK MANAGEMENT

5.1 The risk management implications follow the table below:

Corporate priorities engaged:	All/Corporate
Statutory powers:	Section 135 Local Government Act 1972; and Accounts and Audit Regulations 2011.
Biodiversity considerations:	No specific biodiversity issues arising from this report.
Sustainability considerations:	No specific sustainability issues arising from this report.
Crime and disorder implications:	No specific crime and disorder issues arising from this report.
Background papers:	Constitution: Contract Procedure Rules CIPFA: Contract Procedure Rules - Guidance and Template 2006
Appendices attached:	Appendix A: Contract Procedure Rules 2014.

STRATEGIC RISKS TEMPLATE

No	Risk Title	Risk/Opportunity Description	Inherent risk status			Mitigating & Management actions	Ownership	
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
1	Need for Contract Procedure Rules and updates.	<p>a) Risk to the business environment and potential cost to the Council if officers break procurement law.</p> <p>b) There is a risk that allowing greater flexibility in procurement may in some circumstances undermine the control environment and impact upon the budgetary performance.</p> <p>c) Risk of accusation of favouring against individual officers or the Council if procurement is not carried out in a structured way.</p>	4	2	8	↔	<p>Updated Contract Procedure Rules provide managers with a set of comprehensive rules with the flexibility to enable them to act quickly were the need arises, and remain within procurement law.</p> <p>The Rules contribute to the control environment and are regularly monitored with breaches reported to the Audit Committee.</p> <p>Use of the Rules will protect officers and the Council from accusations of impropriety from unsuccessful suppliers or others.</p>	

No	Risk Title	Risk/Opportunity Description	Inherent risk status			Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel		
2	Benefits of Shared Procurement	The Corporate Procurement Officer may be restricted in the benefits that she/he can bring through shared procurement arrangements. Opportunities for local suppliers to be used whilst having regard for the need NOT to favour any specific suppliers and all of the Council's procurement guidelines.	3	2	6	↔	All key procurement arrangements and limits have been brought up to date and aligned for the future benefit of any shared service agenda.

Direction of travel symbols ↓ ↑ ↔



**South Hams
District Council**



**West Devon
Borough
Council**

**CONSTITUTION PART 4
CONTRACT PROCEDURE RULES (JOINT)**

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A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

These Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good procurement practice and public accountability and deter corruption.

Adherence to consistent and comprehensive Rules helps protect the Council against challenges that it has acted unlawfully or fraudulently.

Officers responsible for purchasing must comply with these Contract Procedure Rules. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract.

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail (or other e-communication systems e.g. e-tendering) fax transmissions as well as hard copy.

- Follow the rules whenever you purchase goods or services or order building work.
- Take all necessary **procurement**, legal, financial and professional advice.
- Declare any personal financial interest in a *Contract*. Corruption is a criminal offence.
- Conduct any *Value for Money* review and appraise the purchasing need.
- Check whether there is an existing *Contract* or **framework agreement** in place open to the Council that you can make use of before undergoing a competitive process
- Normally allow at least four weeks for submission of bids (not to be submitted by **hard copy**, fax or e-mail).
- Keep bids confidential.
- Complete a written *Contract* or Council order before the supply or works begin.
- Identify a contract manager with responsibility for ensuring the *Contract* delivers as intended.
- Keep records of dealings with suppliers.
- Assess each *Contract* afterwards to see how well it met the quality of delivery and *Value for Money* requirements.

In accordance with the *Constitution*, the *S.151 Officer* shall have the power to make amendments from time to time to these Contract Procedure Rules after consultation with the *Monitoring Officer*, Internal Audit and the *Corporate Procurement Officer*. Proposed amendments must be submitted to the Audit Committee for recommendation to the Council of approval, where appropriate.

Terms in *italics* are defined in the Definitions Appendix.

Acknowledgements: CIPFA

Contributors:

Corporate Procurement Officer (Shared)

Internal Audit: South Hams and West Devon Councils (Shared)

Internal Audit: Teignbridge District Council

Legal team: South Hams and West Devon Councils (Shared)

S.151 Officer and Monitoring Officer

DEFINITIONS

Term	Definition
Agent	A person or organisation acting on behalf of the Council or on behalf of another organisation.
Award Criteria	The criteria by which the <i>Contract is to be awarded to the successful Tenderer</i> (see further Rules 10 and 11.2e).
Award Procedure	The procedure for awarding a <i>Contract</i> as specified in Rules 8, 10 and 15.
Bid	<i>A Supplier's proposal submitted in response to the Procurement Documentation</i>
Bond	An insurance policy: if the contractor does not do what it has promised under a <i>Contract</i> with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10% of the <i>Contract</i> value). A bond is intended to protect the Council against a level of cost arising from the contractor's failure.
Code of Conduct (Officers)	The code regulating conduct of Officers, available on the Council's Intranet.
Code of Conduct (Members)	As set out in the Constitution – Part 5.
Concession Contracts	<i>Shall mean a public contract under which Supplier/s are given the (exclusive) right to exploit the works or services provided for their own gain and where the Supplier's income is generated solely from third parties or as a combination of revenue streams from both third parties and the Council</i>
Constitution	The constitutional document approved by the Council which: <ul style="list-style-type: none"> • Allocates powers and responsibility within the Council and between it and others • Delegates authority to act to the Executive/Committees, Other Member Bodies and Officers; regulates the behaviour of individuals and groups through rules of procedure, codes and protocols. • Available on the Internet
Consultant/ Consultancy	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work.
Contract	<i>Is a legally binding agreement concluded in writing for consideration (whatever the nature of the consideration, whether by payment or some other form of reward) under which a contracting authority engages a person or organisation to provide goods, works or services.</i>
Contracting Decision	Any of the following decisions: <ul style="list-style-type: none"> • Withdrawal of <i>Invitation to Tender</i> • Whom to invite to submit a <i>Quotation</i> or <i>Tender</i> • <i>Shortlisting</i> • Award of <i>Contract</i> • Any decision to terminate a <i>Contract</i> • <i>Any decision to extend or vary a Contract.</i>

DEFINITIONS

Term	Definition
Contract Notice	An advertisement placed in the Official Journal of the European Union, which is a legal requirement for all procurements that exceed the <i>EU Threshold</i> .
Corporate Contract	A <i>Contract</i> let by the <i>Corporate Procurement Officer</i> to support the Council's aim of achieving <i>Value for Money</i> to include Contracts let by the Council and/or Contracts or Framework Agreements let by other organisations to which the Council has access.
Corporate Procurement Officer	The Council's procurement officer charged with providing strategic direction and advice to secure <i>Value for Money</i> in the Council's procurement activities.
Dynamic Purchasing System	A completely electronic system of limited duration which is— (a) established by a contracting authority to purchase commonly used goods, work, works or services; and (b) open throughout its duration for the admission of economic operators which satisfy the selection criteria specified by the contracting authority; and (c) submit an indicative <i>Tender</i> to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person.
Electronic Auction	Is a means of seeking the <i>Supplier's</i> pricing in an electronic format in a live competitive environment, the aim of which is to achieve greater <i>Value for Money</i> than traditional tendering
Executive/ Committees	The Council's Executive/Committees as defined in the <i>Constitution</i> .
EU Procedure	The procedure required by the EU where the <i>Total Value</i> exceeds the <i>EU Threshold</i> .
EU Threshold	The value at which the EU public procurement directives apply.
European Economic Area	The members of the European Union, and Norway, Iceland and Liechtenstein.
Financial Procedure Rules	The Financial Procedure Rules outlining <i>Officer</i> responsibilities for financial matters issued by the <i>S.151 Officer</i> in accordance with the <i>Constitution</i> (Financial Procedure Rules).
Framework Agreement	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
Government Procurement Agreement	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the <i>European Economic Area</i> are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.
Head of Service/Director	The officers defined as such in the <i>Constitution</i> .
High Profile	A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong.

DEFINITIONS

Term	Definition
High Risk	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
High Value	A high-value purchase is where the value exceeds the <i>EU Threshold</i> values.
Interests	<p>Is a connection to another person or organisation that meets any of the following criteria:</p> <ul style="list-style-type: none"> (a) Ownership of shares in a Supplier or any other financial interest in a Supplier whether held by the relevant individual or by a close relative of the Individual or by any corporate entity in which the individual has an interest; and/or (b) Employment by a Supplier of the individual or a close relative of the Individual; and/or (c) Provision of services to a Supplier by the Individual or by the firm the individual is associated with, and/or (d) Connection with, whether prejudicial or otherwise, any person/s said to be affected by the outcome of a procurement process.
Invitation to Tender (ITT)	<i>Invitation to Tender</i> documents in the form required by these Contract Procedure Rules.
Key Decision	Decisions that are defined as key decisions in the <i>Constitution</i> .
Monitoring Officer	As identified in the Constitution. The Monitoring Officer or the Monitoring Officer's formally nominated deputy
Nominated Suppliers	Those persons specified in a main <i>Contract</i> for the discharge of any part of that <i>Contract</i> .
Non-commercial Considerations	<ul style="list-style-type: none"> (a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters'). (b) Whether the terms on which contractors <i>Contract</i> with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only. (c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy. (d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes'). (e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors. (f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees. (g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support. <p><i>Continued overleaf.</i></p>

DEFINITIONS

Term	Definition
Non-commercial Considerations (Continued)	(h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best <i>Value</i> ; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (<i>TUPE</i>) may apply
Officer	The officer designated by the <i>Head of Service</i> to deal with the <i>Contract</i> in question.
Parent Company Guarantee	A <i>Contract</i> which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a <i>Contract</i> with the Council, the Council can require the parent company to do so instead.
Portfolio Holder	A member of the <i>Executive/Committees</i> to whom political responsibility is allocated in respect of specified functions.
Pre-Qualification Questionnaire (PQQ)	The <i>PQQ</i> is a questionnaire issued to ascertain the suitability of potential suppliers to provide goods, services or works as identified in the tender advertisement / contract notice.
Priority Services	Those services required to be tendered as defined in the EU public procurement directives.
Procurement Documentation	Shall mean the documents dispatched to <i>Suppliers</i> as part of procurement process; comprised of the instructions and information to applicants, contract information, specification, pricing schedule and certificates for signature.
Procurement Strategy	The document setting out the Council's approach to procurement and key priorities for-a specified period of time.
Purchasing Guidance	The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these Contract Procedure Rules. The guidance is available on the Council's intranet and Procurement Tool .
Quotation	A quotation of price and any other relevant matter (without the formal issue of an <i>Invitation to Tender</i>). Definition - A formal statement of promise (submitted usually in response to a request for quotation) by a potential supplier to supply the goods or services required by a buyer (the Council), at specified prices, and within a specified period. A quotation may also contain terms of sale and payment, and warranties. Acceptance of quotation by the buyer constitutes an agreement binding on both parties.
Relevant Contract	Contracts to which these Contract Procedure Rules apply (see Rule 4).
S.151 Officer	The officer as may be designated S.151 Officer by the Council in line with the Constitution, including the appointed Deputy S.151 Officer.
Selection Criteria	The Authority's minimum requirements by which the Tenderer is to be assessed as being suitable to proceed with the <i>Tender</i> process

DEFINITIONS

Term	Definition
Service Manager	The <i>Officer's</i> immediate superior or the <i>Officer</i> designated by the <i>Head of Service</i> to exercise the role reserved to the Service Manager by these Contract Procedure Rules.
Shortlisting	The process of selecting <i>Suppliers</i> who are to be invited to quote or bid or to proceed to final evaluation.
Standstill	Shall mean the period between notification of the intention to award a <i>Contract</i> in accordance with the <i>EU Procedure</i> and the formal award of said <i>Contract</i>
Sub-Contractors	Those persons specified in a main <i>Contract</i> for the discharge of any part of that <i>Contract</i> .
Supplier	Any person who asks or is invited to submit a <i>Quotation</i> or <i>Tender</i> .
Teckal	An exception to the Public Contracts Regulations 2006 that means a <i>Contract</i> let by a public body will not be deemed to be a <i>Contract</i> for the purposes of the public procurement regime, provided that certain criteria are met
Tender	A <i>Supplier's</i> proposal submitted in response to the <i>Invitation to Tender</i>
Tender Register Pro Forma	The log kept by the <i>Monitoring Officer</i> to record details of <i>Tenders</i> (see Rule 13.5).
Total Value	<p>The whole of the value or estimated value (in money or equivalent value) for a single purchase, <i>Contract</i> calculated as follows:</p> <p>(a) Where the <i>Contract</i> is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period, including any permitted extensions</p> <p>(b) Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months.</p> <p>(c) Where the <i>Contract</i> is for an uncertain duration, by multiplying the monthly payment by 48</p> <p>(d) Where a single requirement for goods or services or for the carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfill that requirement</p> <p>(e) Where the <i>Contract</i> is to be executed over a period for goods or services and</p> <ul style="list-style-type: none"> • a series of contracts; or • a <i>Contract</i> which under its terms is renewable <p>is entered into</p> <p>(f) Where there are a number of requirements over a given period for contracts that have similar requirements or are for the same type of goods and service</p> <p>(g) For feasibility studies, the value of the scheme or contracts which may be awarded as a result</p> <p>(h) For <i>Nominated Suppliers and Sub-contractors</i>, the <i>Total Value</i> shall be the value of that part of the main <i>Contract</i> to be fulfilled by the <i>Nominated Supplier or Sub-contractor</i></p> <p><i>Continued overleaf</i></p>

DEFINITIONS

Term	Definition
Total Value (Continued)	<p>(i) The <i>Total Value</i> of all contracts expected to be placed under a <i>Framework Agreement</i></p> <p>(j) The <i>Total Value</i> of all contracts expected to be placed under a <i>Dynamic Purchasing System</i></p> <p>(k) The <i>Total Value</i> of the requirement where more than one (1) organisation will purchase under the same <i>Contract</i></p>
TUPE Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246)	<p>Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business</p>
Value for Money	<p>Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.</p>

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

1. BASIC PRINCIPLES

All purchasing procedures and **the letting of Concession Contracts** must:

- **Comply with these Contract Procedure Rules and Financial Procedure Rules (both at Part 4 of the Constitution)**
- Achieve Value for Money for public money spent
- Be consistent with the highest standards of integrity, having regard to the Council's Anti Fraud, Corruption and Bribery Policy and Strategy, and the Office of Fair Trading guidance on Anti Competitive Behaviour.
- Ensure fairness in allocating public contracts
- Comply with all legal and financial requirements
- Ensure that Non-commercial Considerations do not influence any Contracting Decision
- Support the Council's corporate and departmental aims and policies
- Comply with the Council's **Procurement Strategies**
- Be followed by **Officers** of the Council in all procurement activities including circumstances where there has been any challenge by the community.

2. OFFICER RESPONSIBILITIES

2.1 Officers

2.1.1 Officers responsible for purchasing must comply with these Contract Procedure Rules, Financial Procedure Rules, the Code of Conduct and with all UK and European Union binding legal requirements. Officers must ensure that any Agents, Consultants and contractual partners acting on their behalf also comply.

2.1.2 Officers must:

- Comply with the Basic Principles as above
- Have regard to the Council's Purchasing and Contract Guidance
- Ensure that the appropriate approved budgetary provision is in place
- Check whether a suitable Corporate Contract exists before seeking to let another *Contract*; where a suitable Corporate Contract exists, this must be used unless there is an auditable reason not to
- **For contracts with a *Total Value* above £50,000, take a report to the Executive/Committees at least 6 months before the *Contract* is due to end to consider whether it is appropriate to tender on the same basis as the existing arrangement**
- Keep the records required by Rule 6

2.1.3 When any employee either of the authority or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal advice before proceeding with inviting **Tenders** or **Quotations**.

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

2.2 Heads of Service

2.2.1 Heads of Service must:

- Comply with the Basic Principles as above
- Ensure that their staff comply with Rule 2.1
- Ensure that Exemptions are recorded under Rule 3.2 detailing the nature and value of the *Contract*, parties to the *Contract*, and the circumstances justifying the Exemption and send original exemption to *Monitoring Officer*
- Ensure that the originals of all contracts are given to the *Monitoring Officer* who shall maintain the Contracts Register lodge all documentation securely in the Legal safe.

3. EXEMPTIONS TO THESE RULES

Principles

- 3.1 The Council and its *Executive/Committees* have power to authorise exemptions from the requirement to seek quotations or invite *Tenders* for specific projects, and for South Hams any such decision may be a *Key Decision*.
- 3.2 Where necessary because of exceptional circumstances the *Officer or Head of Service* may seek an exemption with the approval of the officers and members set out in the table below. **The exemption process must not be used as a method of avoiding the use of these Contract Procedure Rules.**
- 3.3 The circumstances where an exemption may be sought are:
- **Life or Death** – Is there a significant chance that the life or health of officers, members or the public will be put at real risk?
 - **Increased Costs/Loss of Income** – Will the Council incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council)?
 - **Limited Markets** – Would the Council be wasting its time obtaining quotations as supply of the product or service is demonstrably restricted to one or a few businesses? (Evidence that the market has been tested must be available)
 - **Risk to Reputation** – Would the Council be criticised for failing to act promptly?
- 3.4 **No exemption** can be used if the **EU Procurement Rules** apply. The latest EU procurement limits are available from either the *Corporate Procurement Officer* or *Internal Audit*.

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

Process

- 3.5 Pro-formas must be used and are available on the Council's Intranet or from the *Monitoring Officer* or Internal Audit.
- 3.6 Exemptions from compliance with the Contract Procedure Rules may be granted with the original signatures of:

Total Value (excl. VAT)	Exemption Authorised By
£7,500–£50,000	<i>Internal Audit</i> <i>Monitoring Officer</i> <i>S.151 Officer</i>
£50,001–EU Threshold	<i>Corporate Procurement Officer (Internal Audit in his/her absence)</i> <i>Monitoring Officer</i> <i>S.151 Officer</i> South Hams - Leader or Deputy Leader West Devon - Chairman or Vice Chairman of the relevant Committee.
Above <i>EU Threshold</i>	No exemption permitted

- 3.7 **Total Value** is discussed at Paragraph 8 and the **Definitions Prefix**, which says that to obtain the estimated value of the *Contract*, the *Officer* must calculate the *Total Value* (excluding VAT) for the period of the *Contract*. **For example, a *Contract* let for 5 years at an estimated £20,000 per year, excluding VAT, has a *Total Value* of £100,000. The procurement must be based on £100,000 NOT the annual amount.**
- 3.8 Forms supported by the evidence that the exemption criteria have been met, must be sent to the *Monitoring Officer* or *Internal Audit*, **and the *Corporate Procurement Officer***, in the first instance.
- 3.9 The original copy of the fully completed form must be sent to the *Monitoring Officer*, with a copy to Internal Audit.
- 3.10 The number of approved Exemptions will be reported to the Audit Committee by Internal Audit.
- 3.11 **In exceptional circumstances an Exemption may be deemed necessary that is outside of the four criteria at 3.3. Any such Exemption can only be granted by the relevant member body on receipt of a joint report of the applicant and the *Corporate Procurement Officer*.**

In-House or 'Quasi' In-House Arrangements

- 3.12 Where the Council seeks to provide goods, works or services through its own internal resources it may do so without triggering a procurement exercise (links to Financial Procedure Rules).
- 3.13 Where the Council seeks to provide goods, works or services by entering in to a formal arrangement with another public sector body over which it has some

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

ownership or control it may do so without triggering a procurement exercise where it can be demonstrated that two limited conditions are met, that:

- The Council must exercise over the body to be awarded the *Contract* “a control which is similar to that which it exercises over its own departments”; meaning that the Council must have a power of decisive influence over both strategic objectives and significant decisions of the body awarded the *Contract*; and
- The body awarded the *Contract* carries out “the essential part” of its activities for the Council; meaning that the body must do little or no other work besides fulfilling the *Contract* on behalf of the Council.

This is known as the ‘Teckal’ exception.

3.14 *Officers* must proceed with caution when invoking Teckal exception, and advice must be sought from the *Corporate Procurement Officer*, as a number of factors are capable of eroding the exception, including:

- Any private sector funding and/or involvement in the body awarded the *Contract*, whether at the inception or during its life;
- Any market participating by the body awarded the *Contract* to include trading its goods, works or services elsewhere;
- Where joint ownership of the body awarded the *Contract* reduces the amount of control exercised by the Council.

COLLABORATIVE & E-PROCUREMENT ARRANGEMENTS

3.15 The *Corporate Procurement Officer* must be consulted prior to commencing a procurement process using any consortia contracts e.g. **Crown Commercial Services (CCS)**. The terms and conditions of *Contract* applicable to any consortia arrangement, including the requirement to undertake competition between providers, must be fully complied with.

3.16 In order to secure *Value for Money*, the authority may enter into collaborative procurement arrangements. The *Officer* must consult the *Corporate Procurement Officer* where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.

3.17 All purchases made via a consortium are deemed to comply with these Contract Procedure Rules and no exemption is required.

3.18 However, purchases above the EU Threshold must be let under the EU Procedure, unless the consortium has demonstrated that it has satisfied this requirement already by letting their *Contract* in accordance with the EU Procedures on behalf of the authority and other consortium members.

3.19 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the Contract Procedure Rules of the leading organisation, will be deemed to comply with these Contract Procedure Rules and no exemption

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

is required. However, **advice must be sought from the *Corporate Procurement Officer*.**

- 3.20 The use of e-procurement technology enhances the administrative process for tendering (audit trails etc.) but does not negate the requirement to comply with all elements of these Contract Procedure Rules, particularly those relating to competition and Value for Money.

4. RELEVANT CONTRACTS

- 4.1 All *Relevant Contracts* must comply with these Contract Procedure Rules. A *Relevant Contract* is any arrangement made by, or on behalf of, the authority for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

- The supply of goods (for disposal of goods and assets see the *Financial Procedure Rules*)
- The hire, rental or lease of goods or equipment
- The delivery of services, including (but not limited to) those related to:
 - the recruitment of staff
 - financial, *legal* and *Consultancy* services
- *Development Agreements under certain circumstances (see Section 24 for further details)*
- *Concession Contracts*

and where the *Supplier* is:

- *Another public sector organisation, to include a town and/or parish council*
- *A third sector organisation, to include social enterprises, not-for-profit organisations or charities.*

- 4.2 *Relevant Contracts do not include:*

- Contracts of employment which make an individual a direct employee of the authority; or
- Agreements regarding the acquisition, disposal, or transfer of land and buildings (for which Financial Procedure Rules shall apply), *subject to the detail provided at section 24*; or
- *S.151 Officer* dealing in the money market or obtaining finance for the Council; or
- Contracts made by the *Monitoring Officer* for the appointment of counsel.

SECTION 2: COMMON REQUIREMENTS

5. STEPS PRIOR TO PURCHASE

5.1 The *Officer* must appraise the purchase, in a manner commensurate with its complexity and value and taking into account any *purchasing guidance*, by:

- Ensuring the Social Value (Public Services) Act 2012 is complied with for all service contracts where the Total Value exceeds the EU Threshold
- Taking into account the requirements from any relevant Value for Money review and the views of the community where appropriate and in line with related Council guidance
- Appraising the need for the expenditure and its priority, including the position of any existing *Contract* or *Framework Agreement* in terms of end date/required notice
- Defining the objectives of the purchase and consider whether it is appropriate to tender on the same basis as the existing arrangement (see also Rule 2.1.2)
- Assessing the risks associated with the purchase and how to manage them
- Considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium
- Consulting users as appropriate about the proposed procurement method, *Contract* standards and performance and user satisfaction monitoring
- Ensuring that the appropriate terms and conditions are used to apply to the proposed *Contract* (if other than the Council's standard terms and conditions, the advice of the *Corporate Procurement Officer*, the *Council's Solicitor* and/or *Monitoring Officer* must be sought)
- Setting out these matters in writing if the *Total Value* of the purchase exceeds £7,500.

5.2 The *Officer* must also confirm that:

- There is member or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the Constitution
- South Hams - If the purchase is a Key Decision (as defined in the Constitution), all appropriate steps have been taken.
- In the case of expenditure on an asset (particularly property), that the asset is the Council's responsibility.

6. RECORDS

6.1 Where the ***Total Value*** is less than **£50,000**, the following records must be kept:

- Invitations to quote and Quotations

SECTION 2: COMMON REQUIREMENTS

- A record:
 - of any exemptions and the reasons for them
 - of the reason if the lowest price is not accepted (To accept a *Quotation* other than the lowest, the *Officer* must be satisfied that the *Tender* represents the most economically advantageous bid and best value for money. The *Award Criteria* for this should have been set out in advance and evaluation records must be retained. See 10.4 Award Criteria).
- Written (including electronic) records of communications with the successful contractor.

6.2 Where the **Total Value exceeds £50,000** the following records must be kept:

- Pre-tender market research
- Any exemption under Rule 3 together with the reasons for it
- The method for obtaining bids (see Rule 8.1)
- **The Selection Criteria in descending order of importance**
- The **Award Criteria** in descending order of importance
- **Invitation to Tender** documents sent to and received from **Suppliers**
- Clarification and post-tender negotiation (to include minutes of meetings)
- Any Contracting Decision and the reasons for it
- Legal advice
- The **Contract** documents and **any variations or extensions**
- Post-contract evaluation and monitoring
- Communications with **Suppliers** and with the successful contractor throughout the period of the **Contract**;
- **Ongoing checking of the financial position of the successful contractor throughout the period of the Contract.** (see also Section 5 Contract Management).

6.3 Records required by this rule must be kept for six years after the end of the *Contract*.

6.4 Documents which relate to unsuccessful Suppliers must be destroyed after 12 months has elapsed from the date of the award of successful *Contract*, provided there is no dispute about the award.

7. ADVERTISING AND FRAMEWORK AGREEMENTS

7.1 Identifying and Assessing Potential Suppliers

Identifying

7.1.1 Wherever practicable *Officers* shall ensure that where the *Total Value* of the proposed *Contract* does not exceed £50,000 they shall invite a minimum of three suppliers, one of whom must have a head office which is registered within the Council's boundaries. *Officers* shall be seen to alternate the *Suppliers* to whom quotation documentation is sent so as to ensure fair competition within the market.

SECTION 2: COMMON REQUIREMENTS

7.1.2 *Officers* shall ensure that, where proposed contracts, irrespective of their *Total Value*, might be of interest to potential *Suppliers* located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the *Contract* to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- The Council's website
- **The Council's electronic tendering system**
- National official journals, or
- The Official Journal of the European Union (OJEU)/E Notices/Tenders Electronic Daily (TED) (even if there is no requirement within the EU Procedure).

7.1.3 **For proposed contracts that are expected to exceed £50,000, assessment and selection will be in conjunction with the Corporate Procurement Officer.**

Assessing

7.1.4 *Officers* are responsible for ensuring that all *Suppliers* for a *Relevant Contract* are suitably assessed. The assessment process shall establish that the potential *Suppliers* have sound:

- Economic and financial standing
- Technical ability and capacity

to fulfil the requirements of the authority.

7.1.5 This shall be achieved in respect of proposed contracts that are expected to **exceed £50,000** by selecting firms from shortlists assessed from expressions of interest in a particular *Contract* submitted in response to a public advertisement.

7.2 Approved Lists

7.2.1 *Approved Lists* will not be maintained. This is because of the cost of proper administration and the need to ensure that competition is maximised.

7.2.2 *Suppliers* interested in doing business with the Council must register on the Council's **electronic** tendering system, which is **available at** www.supplyingthesouthwest.org.uk

7.2.3 A register of pre-qualified contractors and *Consultants* maintained by or on behalf of central government (e.g. Constructionline, Accredited) will be not be deemed to be an *Approved List* for the purpose of these Contract Procedure Rules and therefore can be used after having sought the advice of the *Corporate Procurement Officer*.

SECTION 2: COMMON REQUIREMENTS

7.3 Framework Agreements

7.3.1 A *Framework Agreement* is an arrangement of one or more **contracting authorities** with one or more suppliers in order to establish the terms governing the contracts awarded during a given period.

In setting up a *Framework Agreement* the term of must not exceed four years. There must be one (a **single-provider framework**), or more than two (2) (**multi-provider framework**) *Suppliers* within an agreement under EU procurement law. The Council's *Corporate Procurement Officer* must always be consulted before any action is taken.

New framework suppliers may not be added during the life of a *Framework Agreement*.

The *Total Value of the Framework Agreement* must be the total of all contracts that are anticipated to be awarded under the agreement and as such it is recommended that a realistic range be provided within the Contract Notice or tender advertisement.

7.3.2 Contracts based on *Framework Agreements* may be awarded by either:

- Applying the terms laid down in the *Framework Agreement* (where such terms are sufficiently precise to cover the particular call-off) without reopening competition (also known as a *direct award*), or
- Where the terms laid down in the *Framework Agreement* are not precise enough or complete for the particular call off by holding a further competition in accordance with the following procedure:
 - inviting the organisations within the Framework Agreement that are capable of executing the subject of the *Contract* to submit written **Tenders**
 - fixing a time limit which is sufficiently long to allow **Tenders** for each specific *Contract* to be submitted, taking into account factors such as the complexity of the subject of the *Contract*
 - awarding **the Contract** to the tenderer who has submitted the best *Tender* on the basis of the *Award Criteria* set out in the specifications of the *Framework Agreement*.

When a *Framework Agreement* has been selected for use only the *Suppliers* that appear on the agreement may be approached to provide the *Contract*. Multiple *Framework Agreements* may not be selected for use to procure one single *Contract*.

Contracts may be awarded beyond the life of a *Framework Agreement* provided that such contracts are not awarded improperly or in a way that seeks to distort competition. As an example it would serve to distort competition to award a *Contract* that significantly exceeded the life of the *Framework Agreement* where it was not common practice or expected by the market to do so.

SECTION 2: COMMON REQUIREMENTS

A *Contract* procured under a *Framework Agreement* by another user may not be used by way of avoiding running a further competition, unless expressly permitted by the terms of the *Framework Agreement* or resultant call-off contract.

The *Standstill* obligations need only be applied to contracts awarded against a *Framework Agreement* that will exceed the *EU Threshold*.

7.4 Dynamic Purchasing System

7.4.1 A *Dynamic Purchasing System* is similar to a *Framework Agreement* insofar as it is an arrangement of one or more contracting authorities with one or more suppliers in order to establish the terms governing the contracts awarded during a given period, the term must not exceed four years and its *Total Value* must be the total of all contracts that are anticipated to be awarded under it.

The way in which the *Dynamic Purchasing System* is different to a *Framework Agreement* is that additional *Suppliers* can be added throughout the life of the arrangement.

7.4.2 In opening up access to *Suppliers* to the *Dynamic Purchasing System* the *Officer* must:

- Offer unrestricted, direct and full access to the procurement documents by electronic means at all times throughout the life of the *Dynamic Purchasing System*;
- Allow new applications to be submitted throughout the life of the *Dynamic Purchasing System*;
- Complete the evaluation of a newly submitted application within fifteen days of its receipt;
- Admit to the *Dynamic Purchasing System* all new *Suppliers* that satisfy the *Selection criteria*; and
- Notify *Suppliers* of their admission to the *Dynamic Purchasing System* or rejection of their application.

7.4.3 In awarding a *Contract* under the *Dynamic Purchasing System* the *Officer* must:

- Place an advertisement against the *Dynamic Purchasing System* to notify *Suppliers* of the requirement to award a *Contract*. Where the *Dynamic Purchasing System* has been established in accordance with the EU procurement rules, i.e. where the *Total Value* exceeds the *EU Threshold*, this must take the form of a simplified *Contract Notice*;
- Evaluate any new applications in response to the advertisement prior to issuing *Invitations to Tender* under the *Dynamic Purchasing System*;

All *Suppliers* admitted to the *Dynamic Purchasing System* must be given an opportunity to respond to the *Invitation to Tender*,

SECTION 2: COMMON REQUIREMENTS

The *Contract* shall be awarded to the *Supplier* that submits the best bid in accordance with the *Selection and Award Criteria* set out in the original advertisement or *Contract Notice*.

- 7.4.4 The Council's *Corporate Procurement Officer* must always be consulted before any action is taken to establish a *Dynamic Purchasing System*.

SECTION 3: CONDUCTING PURCHASES

8. COMPETITION REQUIREMENTS FOR PURCHASE AND PARTNERSHIP ARRANGEMENTS

8.1 Purchasing: Competition Requirements to Obtain Quotations or Tenders

8.1.1 The **Total Value** is defined within these Contract Procedure Rules as the whole of the value or estimated value (in money or equivalent value) for a single purchase, *Contract* calculated as follows:

- (a) Where the *Contract* is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period, including any permitted extensions
- (b) Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months.
- (c) Where the *Contract* is for an uncertain duration, by multiplying the monthly payment by 48
- (d) Where a single requirement for goods or services or for the carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfill that requirement
- (e) Where the *Contract* is to be executed over a period for goods or services and
 - a series of contracts; or
 - a *Contract* which under its terms is renewable is entered into
- (f) Where there are a number of requirements over a given period for contracts that have similar requirements or are for the same type of goods and service
- (g) For feasibility studies, the value of the scheme or contracts which may be awarded as a result
- (h) For *Nominated Suppliers and Sub-contractors*, the *Total Value* shall be the value of that part of the main *Contract* to be fulfilled by the *Nominated Supplier or Sub-contractor*
- (i) The *Total Value* of all contracts expected to be placed under a *Framework Agreement*
- (j) The *Total Value* of all contracts expected to be placed under a *Dynamic Purchasing System*.

The following procedures apply where there are no other procedures which take precedence (such as agency agreements with government). If in doubt, *Officers* must seek the advice of the *Corporate Procurement Officer*.

Where the *Total Value* for a purchase is within the values in the first column below, the Award Procedure in the second column must be followed. Short listing shall be done by the persons specified in the third column.

SECTION 3: CONDUCTING PURCHASES

Total Value (excl. VAT)	Award Procedure	Short listing
(Up to £7,500)	A minimum of one <i>Quotation</i> , but good practice to seek most favourable prices and terms, having regard to the Council's Procurement Strategy.	<i>Officer</i> - See also Financial Procedure Rules
(£7,501 - £50,000)	A minimum of three written <i>Quotations</i>	<i>Officer</i> and <i>Service Manager</i>
(£50,001 – EU Threshold)	<i>Invitation to Tender</i> by advertisement	<i>Officer</i> and <i>Head of Service</i> in consultation with the <i>Corporate Procurement Officer</i>
Above EU Threshold	EU Procedure or, where this does not apply, <i>Invitation to Tender</i> by advertisement	<i>Officer</i> , <i>Service Manager</i> and <i>Head of Service</i> in consultation with the <i>Corporate Procurement Officer</i>
£50,000 – EU Threshold	All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these <i>Contract Procedure Rules</i> and no waiver is required e.g. Devon Procurement Services. However, purchases above the <i>EU Threshold</i> must be let under the EU Procedure, unless the consortium has satisfied this requirement already.	See paragraph 3.7.
All values. Collaborative Contracts	The <i>Corporate Procurement Officer</i> must be consulted prior to commencing any procurement process using collaborative contracts. The terms and conditions of <i>Contract</i> applicable to any collaborative <i>Contract</i> , including the requirement to undertake competition between providers, must be fully complied with.	See paragraph 3.6.
All values. ICT	All system developments and purchases of computer equipment or software must be approved by ICT team and awarded in line with these Rules.	<i>Officer</i> , <i>Business Manager</i> and (TBC) in consultation with the <i>Corporate Procurement Officer</i>

8.1.2 Where it can be demonstrated that there are insufficient suitably qualified *Suppliers* to meet the competition requirement, all suitably qualified *Suppliers* must be invited to quote and *Tender* and the *Corporate Procurement Officer* informed. If it can be clearly demonstrated that less than the required

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quotations are available, then an Exemption form in line with paragraph 3.3 must be completed.

8.1.3 An *Officer* must not enter into separate contracts nor select a method of calculating the *Total Value* in order to minimise the application of these Contract Procedure Rules or EU procurement rules.

8.1.4 Where the *EU Procedure* is required, the *Officer* shall also consult the *Corporate Procurement Officer*, as appropriate, to determine the method of conducting the purchase. See table at Rule 8.1.

8.1.5 Where the Council procures on behalf of itself and other partners (acting as lead authority, the *Total Value* will be the overall value of the *Contract* and not the element of cost that applies to the Council itself.

8.1.6 Where procurement is for a service to be shared between authorities, it must be stated in advance both how the costs are to be apportioned between the partners and where the ownership of any assets falls.

8.2 Collaborative and Partnership Arrangements

8.2.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these Contract Procedure Rules (Rule 3). If in doubt, *Officers* must seek the advice of the *Monitoring Officer* and the *Corporate Procurement Officer*. See table at Rule 8.1.

8.3 The Appointment of Consultants to Provide Services

8.3.1 *Construction Consultants*, to include architects, engineers and surveyors, *financial and management Consultants*, legal advisors and *Consultants* and any other professional persons considered *Consultants* as per the definition provided shall be selected and commissions awarded in accordance with the limits and procedures detailed within these Contract Procedure Rules and as outlined at Rule 8.1.1.

8.3.2 The engagement of a *Consultant* shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or *Contract* of appointment to be in the form agreed by the *Monitoring Officer*.

8.3.3 Records of consultancy appointments shall be maintained in accordance with Rule 6.

8.3.4 *Consultants* shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the Council's Insurance Officer for the periods specified in the respective agreement.

8.3.5 *Officers* must be aware of the Council's duty to assess the employment status of individuals and to assess whether they will be working for the Council in an "employed capacity" or "self employed". The **HM Revenue and Customs**

SECTION 3: CONDUCTING PURCHASES

checklist must be used in the assessment of status and if the individual could be deemed as employed, the Council's recruitment and payroll procedures must be followed (Guidance is on the Intranet which also links to Financial Procedure Rules).

8.4 Assets - Disposal

8.4.1 The disposal of assets must be made in line with the requirements of *Financial Procedure Rules* and the Delegation Scheme.

8.5 Contracts to Provide Services to External Purchasers

8.5.1 The *Monitoring Officer*, *Corporate Procurement Officer* and *Financial Procedure Rules* must be consulted where contracts to work for organisations other than the authority are contemplated.

9. PRE-TENDER MARKET RESEARCH AND CONSULTATION

9.1 The *Officer* responsible for the purchase: may, prior to the issue of the *Invitation to Tender/Quotation*, consult potential suppliers in general terms about the nature, level and standard of the supply, *Contract* packaging and other relevant matters, provided this does not prejudice any potential *Supplier*.

9.2 The *Officer* must not seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential *Suppliers* or distort competition, and should seek advice from the *Monitoring Officer* and the *Corporate Procurement Officer*.

9.3 For service contracts where the *Total Value* will exceed the *EU Threshold* the *Officer* must give due consideration to the Social Value (Public Services) Act 2012 prior to the commencement of the procurement process.

10. STANDARDS AND SELECTION & AWARD CRITERIA

10.1 The *Officer* must define the *Selection Criteria* that are related and proportionate to the subject matter of the *Contract*. These shall form a stage one assessment of whether a Tenderer may progress with a tender process, whether from the *Pre-Qualification Questionnaire (PQQ)* to *Tender* stage or from the *Selection* stage evaluation to the *Award* stage evaluation in an open *Tender*. The criteria to be assessed against may be chosen from the following:

- Criteria for the rejection of the *Supplier*; such as prior criminal convictions, evidence of corruption, bribery, fraud, bankruptcy, grave professional misconduct, tax evasion, etc. (this list is not exhaustive)
- Information as to economic and financial standing; such as banker's statements, insurances, statements of accounts, statements of turnover, etc. (this list is not exhaustive)
- Information as to technical or professional ability; such as

SECTION 3: CONDUCTING PURCHASES

- the *Supplier's* technical ability, taking into account in particular that economic operator's skills, efficiency, experience and reliability;
- a list of works carried out over the past 5 years;
- a statement of the goods sold or services provided by the supplier or the services provider in the past 3 years;
- a statement of the resources available to complete the *Contract*;
- a statement of the *Supplier's* technical capacity to provide the *Contract*;
- environmental management measures;
- average annual number of staff and managerial staff over the previous 3 years;
- any samples, descriptions and photographs of the goods to be purchased or hired; and
- certification by official quality control institutes. (this list is not exhaustive)

The Corporate Procurement Officer must be consulted where the Total Value of the Contract is likely to exceed the EU Threshold.

10.2 *Selection Criteria* must not include:

- *Award Criteria*;
- *Non-commercial Considerations* (See Definitions Appendix);
- *Criteria* that is not related and proportionate to the subject matter of the *Contract*.

10.3 The *Officer* must ascertain what are the relevant British or equivalent European or international standards which apply to the subject matter of the *Contract*. The *Officer* must include those standards which are necessary properly to describe the required quality. This includes sustainability, **environmental and health and safety** standards. The *Monitoring Officer* and *Corporate Procurement Officer* must be consulted if it is proposed to use standards other than European standards.

10.4 The *Officer* must define *Award Criteria* that are appropriate to the purchase and designed to secure an outcome giving *Value for Money* for the authority. The basic criteria shall be:

- 'Most economically advantageous', where considerations in addition to price also apply.
- 'Lowest price' where payment is to be made by the authority when the *Award Criteria* is price alone; or
- 'Highest price' if payment is to be received (See Financial Procedure Rules on disposal of assets)

If the **former** criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any

SECTION 3: CONDUCTING PURCHASES

other relevant matters. *Award Criteria* must be accompanied by the relative weightings ranked in order of importance to the Council in the context of the specific procurement.

10.5 *Award Criteria* must not include:

- *Selection Criteria;*
- *Non-commercial Considerations* (See Definitions Appendix);
- Matters which discriminate against suppliers, irrespective of size, from the European Economic Area or signatories to the Government Procurement Agreement
- *Criteria that is not related and proportionate to the subject matter of the Contract.*

11. PROCUREMENT DOCUMENTATION

11.1 *Council Officers* must prepare their *Procurement Documentation* using the Council's standard templates, which are available on the Council's Intranet site or via the *Corporate Procurement Officer*.

11.2 The *Procurement Documentation* shall state that no *Bid* will be considered unless it is received by the date and time stipulated. No *Bid* delivered in contravention of this clause shall be considered under any circumstances.

11.3 The *Procurement Documentation* shall include the following:

- (a) A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
- (b) A requirement for *Suppliers* to declare that the *Bid* content, price or any other figure or particulars concerning the *Bid* have not been disclosed by the *Supplier* to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- (c) A requirement for *Suppliers* to complete fully and sign all *Bid* documents including a Form of *Tender* and certificates relating to canvassing and non-collusion.
- (d) Notification that *Bids* are submitted to the Council on the basis that they are compiled at the *Supplier's* expense.
- (e) A description of the *Award Procedure* and a definition of the *Award Criteria* (including any scoring mechanism or sub criteria) or in objective terms and if possible in descending order of importance.
- (f) Notification that no *Bid* will be considered unless it is submitted via the Council's electronic tendering system.
- (g) A stipulation that any *Bids* submitted by fax or e-mail shall not be considered, see Rule 13.3 re electronic tendering.
- (h) The method by which any arithmetical errors discovered in the submitted *Bids* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender* or vice versa.

SECTION 3: CONDUCTING PURCHASES

- (i) Instructions to *Suppliers* concerning the procurement process and *Procurement Documentation* and information concerning the contract opportunity.
- (j) The pricing schedule, schedule of rates, whole life costing schedule or other such appropriate pro-forma for gathering the *Supplier's* pricing.
- 11.4 All *Suppliers* invited to *Bid* must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.
- 11.5 All *Procurement Documentation* must specify the goods, service or works that are required, together with the terms and conditions of *Contract* that will apply (see Rule 16).
- 11.6 The *Procurement Documentation* must state that the Council is not bound to accept any *Quotation* or *Tender*, either as a whole or in part.

12. SHORTLISTING

- 12.1 Any *Shortlisting* must be done in accordance with the permitted *Selection Criteria*. Where the *Total Value* of the *Contract* will exceed the *EU Threshold*, the *Officer* must contact the *Corporate Procurement Officer* for advice.
- 12.2 Evaluation criteria must be transparent and sub-criteria specified. *Shortlisting* records must be kept and held for the period specified in the Council's Document Retention Policy and Rule 6.
- 12.3 The *Officers* responsible for *Shortlisting* are specified in Rule 8.1.1.

13. SUBMISSION, RECEIPT AND OPENING OF TENDERS/ QUOTATIONS

- 13.1 *Suppliers* must be given an adequate period in which to prepare and submit a proper *Quotation* or *Tender*, consistent with the complexity of the *Contract* requirement. Normally at least four weeks should be allowed for submission of *Tenders*. The *EU Procedure* lays down specific time periods (see the Council's *purchasing guidance on the Council's Intranet*).
- 13.2 All *Tenders* must be submitted through the Council's approved and secure electronic tendering system.
- 13.3 *Tenders* received by fax or other electronic means (e.g. email) must be rejected.
- 13.4 Each *Tender* must be:
- Suitably recorded so as to subsequently verify the date and precise time it was received
 - Adequately protected immediately on receipt to guard against amendment of its contents

SECTION 3: CONDUCTING PURCHASES

- Recorded immediately on receipt in the Tender Register Pro-Forma.

13.5 *Tenders received after the set date and time must not be accepted and the Corporate Procurement Officer informed of late submissions. For the purposes of these rules the time will be deemed to be at the first stroke e.g. noon will be 12.00.00.*

Tender Opening

South Hams

13.6 The Member Services department will ensure that all *Tenders* are opened at the same time when the period for their submission has ended. The *Officer* or his or her representative must be present. *Tenders* must be opened in the presence of an officer representing the Head of Corporate Services and a Council Member. Where the *Total Value* is more than the *EU Threshold*, the *Corporate Procurement Officer* shall also attend.

13.7 Upon opening, a summary of the main terms of each *Tender* (i.e. significant issues that are unique to each *Tender* submission and were not stated in the *Tender* invitation documents such as *Tender* sum) must be recorded in the *Tender Register Pro-Forma*. The summary must be signed by all present. Where an electronic tendering process is used, those involved must verify the results to the screen.

West Devon

13.8 The Legal department will ensure that all *Tenders* are opened at the same time when the period for their submission has ended. A legal officer will be present for the following:

All *Tenders* with an **estimated value of more than £50,000** shall be opened and recorded by the *Officer*, relevant Senior Officer in the presence of two members from the relevant Committee

Where the *Total Value* is more than the *EU Threshold*, the *Corporate Procurement Officer* shall also attend.

13.9 Upon opening, a summary of the main terms of each *Tender* must be recorded in the *Tender Register Pro-Forma*. The summary must be signed by all present. Where an electronic tendering process is used, those involved must verify the results to the screen.

14. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

14.1 Providing clarification to potential or actual suppliers of an *Invitation to Tender* or *Tender* is permitted:

- **Via the Council's electronic tendering system;**
- In writing;

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- At a meeting provided that a written record is made of the meeting
 - In a way that is fair, transparent and equal to all participants.
- 14.2 Discussions with tenderers after submission of a *Tender* and before the award of a **Contract** with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) **must be the exception** rather than the rule. In particular, such decisions must not be conducted in an *EU Procedure* where this might distort competition, especially with regard to price. If in doubt, seek professional advice from the *Corporate Procurement Officer* or *Monitoring Officer*.
- 14.3 If post-tender negotiations are necessary after a single-stage *Tender* or after the second stage of a two-stage *Tender*, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best *Tender* and after all unsuccessful *Suppliers* have been informed.
- Officers* appointed by the *Head of Service* to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
- 14.4 Post-tender negotiation must only be conducted in accordance with the guidance issued by the *Corporate Procurement Officer* who must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two *Officers*, one of whom must be from a division independent to that leading the negotiations.
- 14.5 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the *Contract* must not be awarded but re-tendered.

15. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING SUPPLIERS

- 15.1 Apart from the debriefing required or permitted by these Contract Procedure Rules, the confidentiality of *Quotations*, *Tenders* and the identity of *Suppliers* must be preserved at all times and information about one *Supplier's* response must not be given to another *Supplier*.
- 15.2 ***Tenders and Quotations*** must be evaluated and awarded in accordance with the ***Selection and Award Criteria***. During this process, *Officers* shall ensure that submitted *Tender* prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 15.3 The arithmetic in compliant *Tenders* must be checked.
- If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm the price or withdraw their *Tender*.**
- 15.4 ***Officers may use Electronic Auctions as means of driving additional Value for Money and as part of the Award Criteria, where this process is completed using the Council's electronic tendering portal.***

SECTION 3: CONDUCTING PURCHASES

Where the *Officer* wishes to use such a tool, the *Corporate Procurement Officer* must be contacted to offer assistance.

Electronic Auctions may also be used as a tool for seeking bids in sale transactions, such as land, where the highest possible price is sought from an applicant. (Links to 'Disposals' in Financial Procedure Rules).

- 15.5 *Officers* may accept *Quotations* and *Tenders* received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these Contract Procedure Rules. Awarding of contracts that are expected to exceed the approved budget sum shall be referred back to the *S.151 Officer*.
- 15.6 Where the **Total Value is over £50,000**, the *Officer* must notify all *Suppliers* in writing simultaneously and as soon as possible of the intention to award the *Contract* to the successful *Supplier*, and include the reasons why for the unsuccessful bidders. Where an unsuccessful *Supplier* requests debrief information the *Officer* may use their discretion in deciding whether or not to comply with the request; there is no legal obligation imperative on the *Officer* to do so.
- 15.7 Where the **Total Value will exceed the EU Threshold** the *Officer* must notify all *Suppliers* in writing simultaneously and as soon as possible of the intention to award the *Contract* to the successful *Supplier*, unless it is known sooner in the procurement process that a *Supplier* has been unsuccessful, in which case the *Officer* must notify the *Supplier* soonest with as much of the information required at 15.8 below as possible. (See 15.9 for further details). The latter applies most particularly, but not exclusively, in the case of a Restricted Procedure whereby the *Officer* must communicate the list of shortlisted *Suppliers* to those that have not been shortlisted.
- 15.8 The letters to the unsuccessful *Suppliers* must contain:
- The criteria for the award of the *Contract*;
 - The reasons for the decision, including the characteristics and relative advantages of the successful *Tender*, the score (if any) obtained by:
 - the *Supplier* which is to receive the notice; and
 - the *Supplier* to be awarded the *Contract*, or to become a party to a *Framework Agreement* or *Dynamic Purchasing System*,
 - The name of the *Supplier* to be awarded the *Contract*, or to become a party to a *Framework Agreement* or *Dynamic Purchasing System*; and
 - A precise statement of either—
 - when the *Standstill Period* is expected to end and, if relevant, how the timing of its ending might be affected by any and, if so what, contingencies; or
 - the date before which the Council will not enter into the *Contract* or conclude the *Framework Agreement* or *Dynamic Purchasing System*.

SECTION 3: CONDUCTING PURCHASES

- 15.9 The *Officer* must provide a *Standstill Period* of at least ten working days, where the communication is made electronically (fifteen days if not) to allow unsuccessful *Suppliers* the opportunity of challenging the decision before the *Officer* awards the *Contract*. The *Standstill Period* shall end at midnight on the final day of *Standstill* and no sooner. Where the last day of the *Standstill Period* is not a working day, the *Standstill Period* is extended to midnight at the end of the next working day. If the decision is challenged by an unsuccessful *Supplier* then the *Officer* shall not award the *Contract* and shall immediately seek the advice of the *Monitoring Officer and Corporate Procurement Officer*.
- 15.10 Where the *Supplier* has been informed of the fact that they have not been successful at an early stage in the procurement process, they must be provided within fifteen days of any request in writing from said *Supplier*, with the reasons that they were unsuccessful.

SECTION 4: CONTRACT AND OTHER FORMALITIES

16. CONTRACT DOCUMENTS

16.1 Relevant Contracts

16.1.1 All Contracts above £7,500 shall be **in writing** in a form approved by the *Monitoring Officer*.

16.1.2 All *Relevant Contracts*, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done)
- The provisions for payment (i.e. the price to be paid and when)
- The time, or times, within which the *Contract* is to be performed
- The provisions for the Council to terminate the *Contract*.

16.1.3 The Council's purchase orders or standard terms and conditions must be used for simple purchases of goods. In any circumstances that require special terms and conditions, the advice of the *Monitoring Officer* and *Corporate Procurement Officer* must be sought.

16.1.4 In addition, every *Relevant Contract* of purchase **over £50,000** must also state clearly as a minimum:

- Health and safety requirements (where applicable and proportionate)
- Sustainability and environmental management requirements (where applicable and proportionate)
- Social Value Act requirements (where applicable, i.e. for service *Contracts with a Total Value in excess of the EU Threshold*)
- Equality Act 2010 requirements (where applicable and proportionate)
- Any insurance requirements
- Data protection requirements, if relevant
- Charter standards to be met, if relevant
- Bribery Act 2010 requirements
- Freedom of Information Act requirements
- A right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant
- Prevention of Corruption and Anti Competitive Behaviour (see paragraphs 18.1 and 18.2) and
- A transparency clause that allows the Council to comply with the government's transparency agenda
- Any confidentiality requirements
- Tax evasion and avoidance requirements.

Where Agents are used to let contracts, that Agents must comply with the Council's Contract Procedure Rules

16.1.5 The formal advice of the *Monitoring Officer* on the form of documentation to be used must be sought for contracts where any of the following apply:

SECTION 4: CONTRACT AND OTHER FORMALITIES

- Where the *Total Value* exceeds £50,000; or
- Below £50,000 if other than the Council's standard terms and conditions are to be used; or
- Those involving leasing arrangements (when the *S. 151 Officer* should also be advised); or
- Where it is proposed to use a supplier's own terms; or
- Those involving the purchase of application software with a *Total Value* of more than £50,000; or
- Those that are complex in any other way.

16.2 Contract Formalities

16.2.1 Agreements shall be completed as follows:

Total Value	Method of Completion	By
Purchase orders - up to £50,000	Electronic Order or Signature	Authorised officer (see Rule 16.2.3)
Contracts and licences up to £50,000. Council's Standard Terms and Conditions	Signature	<i>Head of Service</i> or Nominated Deputy (Rule 16.2.3) or <i>Monitoring Officer</i>
Contracts and licences up to £50,000 Non Standard Terms and Conditions	Signature	<i>Head of Service</i> , on the advice of the <i>Monitoring Officer</i> (Rule 16.2.3) or <i>Monitoring Officer</i>
Above £50,000 or if any of para 16.1.5 applies except ICT software.	Sealing (unless advised by the <i>Monitoring Officer</i> that sealing is not necessary)	<i>Monitoring Officer</i> (See also Rule 16.2.3 and 16.3), on the instruction of the <i>Head of Service</i>
ICT - system developments and purchases of computer equipment or software	Method of completion in line with limits above	As above, except in all cases to be the head of ICT , and not the <i>Head of Service</i> .

16.2.2 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the *Monitoring Officer* or *S.151 Officer*.

16.2.3 The *Officer* responsible for securing a signature on the *Contract* must ensure that the person signing for the other contracting party has authority to bind it. An award letter is insufficient. **The use of Letters of Intent (which are binding for the Council) should be avoided, but in exceptional circumstances they may**

SECTION 4: CONTRACT AND OTHER FORMALITIES

be used with the approval of and review by the *Monitoring Officer* before issue. The same rules relating to signatures apply.

Any new *Contract* should not be signed until the *Contract* it replaces is either ended or under notice.

Depending on the circumstances an officer of the Council may be subject to disciplinary action if he/she signs a *Contract* without being specifically authorised to do so.

16.2.4 All **original** contracts, (save straight forward purchase orders, must be given to the *Monitoring Officer* for secure storage and recording in Legal's **Contract Register. It is the responsibility of the Officer to ensure that this happens, only copies of contracts should be held within services.** An electronic copy must be copied to the *Corporate Procurement Officer* for all contracts with value over £50,000.

16.3 Sealing

16.3.1 A *Contract* must be sealed where:

- The Council may wish to enforce the *Contract* more than six years after its end
- The price paid or received under the *Contract* is a nominal price and does not reflect the value of the goods or services, or
- There is any doubt about the authority of the person signing for the other contracting party.

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16.3.2 Where appropriate contracts are completed by each side adding their formal seal. The fixing of the Council's seal must be witnessed by a further officer on behalf of the *Monitoring Officer*.

16.3.3 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed except in accordance with the Council's *Constitution*.

West Devon

16.3.4 Contracts must be sealed in accordance with Council Procedure Rule 26 and will be overseen by the Council's Solicitor

17. BONDS AND PARENT COMPANY GUARANTEES

17.1 The *Officer* must consult the *S.151 Officer* about whether a *Parent Company Guarantee* is necessary when a *Supplier* is a subsidiary of a parent company and:

- The *Total Value* exceeds £50,000, or

SECTION 4: CONTRACT AND OTHER FORMALITIES

- Award is based on evaluation of the parent company, or there is some concern about the stability of the Supplier.

17.2 The *Officer* must consult the *S.151 Officer* about whether a Bond is needed:

- Where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the *Contract* and there is concern about the stability of the Supplier **i.e. following a formal risk assessment.**
- Where the *Total Value* exceeds £500,000.

18. PREVENTION OF CORRUPTION & ANTI COMPETITIVE BEHAVIOUR

18.1 Prevention of Corruption

18.1.1 The *Officer* needs to be aware of the Bribery Act 2010, which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official and the new corporate offence of failing to prevent bribery, as well as the Council's Anti Fraud, Corruption and Bribery Policy and Strategy.

18.1.2 The *Officer* must comply with the Officers' Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any *Contract*. It will be for the Officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 18.1.3 below.

18.1.3 The following clause must be put in every written Council *Contract*:
"The Council may terminate this Contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:

- (a) Offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council Contract (even if the Contractor does not know what has been done), or
- (b) Commit an offence under the Bribery Act 2010, or
- (c) Commit any fraud in connection with this or any other Council Contract whether alone or in conjunction with Council members, contractors or employees. Any clause limiting the Contractor's liability shall not apply to this clause."

18.2 Anti Competitive Behaviour

18.2.1 In their guidance for public sector procurers, the Office of Fair Trading has highlighted practical steps to take to reduce the risks of anti-competitive behaviour, and this should be followed where it is practical to do so:

- :
- (a) Use non-collusion clauses, certificates of independent bids and requests;

SECTION 4: CONTRACT AND OTHER FORMALITIES

- (b) Ensure sufficient credible bidders;
- (c) Look for suspicious bidding patterns (further guidance available);
- (d) Keep good notes of all discussions and potential bidders and systematically scrutinise them for suspicious patterns e.g. geographical prevalence of certain suppliers' areas.

18.2.2 If there is any doubt during a procurement exercise, or for further guidance, the *Officer* should contact the *Corporate Procurement Officer* or Internal Audit.

19. DECLARATION OF INTERESTS

- 19.1 If it comes to the knowledge of a member or an employee of the authority that a *Contract* in which he or she has an *Interest* has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the *Monitoring Officer*.
- 19.2 Officer must comply with the Officers' *Code of Conduct*, as discussed at paragraph 18.1.2.
- 19.3 All Councillors must comply with the Members' *Code of Conduct* and register all contracts for goods, services or works made between the Council and:
- The councillor,
 - A firm in which s/he is a partner
 - A company in which s/he is a remunerated director
 - A member of the Councillor's family or a person with whom they have a close association, or a partnership or company employing or operated by such a person
 - Any person or body who has a place of business in the South Hams District Council and in which the Councillor has a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 (or one hundredth of the total issued share capital) which ever the lower.
- 19.4 The *Monitoring Officer* shall maintain a record of all declarations of interests notified by members and *Officers*.

SECTION 6: CONTRACT MANAGEMENT

20. MANAGING CONTRACTS

20.1 **Heads of Service must appoint contract managers for all new contracts and for the entirety of the *Contract*.**

20.2 Contract managers must follow best practice in the area of supplier relationship and contract management.

20.3 **Variations or Extensions** should not be made unless this is provided for in the *Invitation to Tender* and the *Contract* itself. Heads of Service must contact the *Monitoring Officer* and the *Corporate Procurement Officer* before any variation is actioned (excludes site variations for construction projects).

Any variations to contracts are to be in writing in the form approved by the *Monitoring Officer*, sequentially numbered and stored with the original *Contract*.

Variations or extensions proposed by the *Officer* that are likely to be considered as 'materially different' from the original *Contract*, on the following grounds:

- When the amendment introduces conditions which, had they been part of the original procurement process, would have allowed for the admission of different *Tenders* or the acceptance of a *Tender* other than the one accepted
- When the amendment "extends the scope of the *Contract* considerably to encompass goods, works or services not initially covered"
- When the amendment changes the economic balance of the *Contract* in favour of the contractor; or
- When there is a change of main contractor, change of ownership of the main contractor, a transfer of shares in the main contractor or a change of sub-contractor where the inclusion of a sub-contractor is inherent to the decision to award the *Contract*

Variations or extensions are unlikely to be permitted on the basis that the proposed *Contract* will be fundamentally different from the old and therefore will a re-tender will be required.

20.4 **Payments** to contractors will only be made on certification by the designated contract manager in line with the Financial Procedure Rules.

20.5 Ongoing checking of the financial position of the successful contractor throughout the period of the *Contract*. The level of any review will vary depending on the type of *Contract* and contractor involved, so the advice of the S.151 Officer or Internal Audit must be sought. The Contractor's insurance should also be checked annually through the life of the *Contract* and details passed to the Council's insurance officer for comment.

20.6 **Liquidated and ascertained damages** must be deducted for all periods of delay in line with the terms of the *Contract*.

SECTION 6: CONTRACT MANAGEMENT

If the Contract Manager does not consider that such damages should be deducted s/he must seek and follow the advice of the *Monitoring Officer* and S.151 Officer.

- 20.7 The Contract Manager must notify the *Monitoring Officer*, the responsible Head of Service, and the *S.151 Officer* promptly on becoming aware of any significant **dispute**, or **claim for additional payment** in connection with a *Contract*.

No liability shall be accepted without the approval of the Executive/Committees in such cases.

21. RISK ASSESSMENT AND CONTINGENCY PLANNING

- 21.1 A business case must be prepared for all procurements with a potential value over the *EU Threshold*. Provision for resources for the management of the *Contract*, for its entirety, must be identified in the business case.

- 21.2 For all contracts with a value of over £50,000, Contract Managers must:

- Maintain a risk register during the contract period in accordance with the Council's Risk Management Strategy
- Undertake appropriate risk assessments and for identified risks (in consultation with the Council's Lead Officer – Risk Management and Risk Management Strategy as appropriate)
- Ensure contingency measures are in place
- **Monitor the financial performance of the contractor or any parent company and alert the S.151 Officer if there is any concerns**

22. CONTRACT MONITORING, EVALUATION AND REVIEW

Contracts Financed from Revenue

- 22.1 All contracts which have a value higher than the *EU Threshold* limits, or which are *High Risk*, are to be subject to formal review(s) by the contract manager with the contractor. The review may be conducted at a frequency that is determined by the risk value and profile of the *Contract*.

- 22.2 As a minimum, for all contracts with a value higher than the *EU Threshold* limits, or which are *High Risk*, an annual report must be submitted to the *Senior Management Team* detailing the financial and service performance.

- 22.3 A contract review process must be applied to all contracts deemed to be *High Risk*, *High Value*, or *High Profile*. This process must be applied at key stages of major procurements.

- 22.4 During the life of the *Contract*, the *Contract Manager* must monitor and take any necessary corrective action in respect of:

SECTION 6: CONTRACT MANAGEMENT

- Performance
- Compliance with specification and *Contract*
- Cost
- Any *Value for Money* requirements
- User satisfaction and risk management.

22.5 When the *Contract* is completed the Contract Manager must submit a report to the Senior Management Team. The report must evaluate the extent to which the purchasing need and the *Contract* objectives (as determined in accordance with Rule 5.2) were met by the *Contract*. Where the *Contract* is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent *Contract*.

Contracts Financed from the Capital Programme

22.6 Procurement for approved capital projects must be made in line with these Rules. Having regard to Rule 15.4, where any *Tender* for projects under the Capital Programme exceeds the available budget by 10% or £50,000 approval to proceed may be made by the Head of Assets and *S.151 Officer* with retrospective reporting through the monitoring process. Above these amounts the specific approval of the Executive/Committees should be sought prior to acceptance.

22.7 The Head of Finance and Audit (*S.151 Officer*), assisted by the Head of Assets, has monitoring responsibilities to receive regular reports from Project Managers on the performance of their project; and report quarterly to the Executive/Committees on the overall progress of the Capital Programme.

22.8 The monitoring report will outline the budget position as a whole and include, as a minimum, the financial position of each approved project.

Project Overspends

22.9 In monitoring expenditure on a project, the *Officer*/Project Manager should seek the formal approval of the *S.151 Officer*, Head of Assets or Members at the earliest opportunity where the approved expenditure appearing in the capital programme is likely to be exceeded.

The following table sets out the authorisation required:

Project Total Value excl. VAT	Overspend excl. VAT	Authorised By
Up to £500,000	£25,000 to £50,000	<i>S.151 Officer</i> Head of Assets With retrospective reporting to the Executive/Committees within the quarterly monitoring report.
Up to £500,000	Exceeds £50,000	Executive/Committees

SECTION 6: CONTRACT MANAGEMENT

Over £500,000	10%	Executive/Committees
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SECTION 7: OTHER RELEVANT CONSIDERATIONS

23. STATE AID

Definition

23.1 State aid can be defined any assistance offered by a public sector body in any form whatsoever that distorts or threatens to distort competition by favouring certain organisations and/or *Suppliers* or the production of certain goods. Such aid may take the form of a grant (capital injection), business tax relief, a reduction in rent or preferential finance (this is not an exhaustive list).

23.2 Where the Council wishes to administer aid in this manner careful consideration must be given prior to such a grant so as to ensure that it is compatible with EU law. Aid that is not compatible with EU law may be recovered from the beneficiary with interest.

23.3 For a grant to be considered as State Aid the following cumulative criteria must be met:

- The beneficiary receives a grant of a benefit or advantage; and
- The aid is give by a Member State or through state resources; and
- The beneficiary receives the aid on a selective basis; and
- The aid granted distorts or threatens to distort competition; and
- The aid is capable of affecting trade between Member States

Granted aid must fulfil all of these criteria in order to be deemed as a State Aid for the purposes of EU law.

23.4 Where a grant is defined as State Aid it must be notified in sufficient time to the European Commission. Aid will not be permitted to be bestowed upon the beneficiary until the Commission has reached a decision as to whether it can be deemed as compatible with EU law or not. Where Aid is incompatible the Council will not be permitted to grant it.

Exemptions for State Aid

23.5 Besides seeking approval from the European Commission, State Aid can be said to be compatible with EU law and can therefore be granted legally if:

- For the most part the total de minimis Aid given to a single recipient is less than €200,000 over a 3-year fiscal period
- Aid in favour of SMEs, research, innovation, regional development, training, employment of disabled and disadvantaged workers, risk capital and environmental protection.
- Aid measures promoting female entrepreneurship, such as aid for young innovative businesses, aid for newly created small businesses in assisted regions, and measures tackling problems like difficulties in access to finance faced by female entrepreneurs.

23.6 Such Aid must still be notified to the European Commission and as a result Council *Officers* are advised to seek the advice and guidance of the *Council's*

SECTION 7: OTHER RELEVANT CONSIDERATIONS

Solicitor and/or Monitoring Officer and Corporate Procurement Officer where State Aid may be said to exist on a particular project or procurement.

24. DEVELOPMENT AGREEMENTS

Definition

- 24.1 A development agreement can be defined as an arrangement between a public sector body and a third party about the use or development of land or property, the nature of which invariably involves the transfer of land that would be otherwise be considered commercially undesirable, which becomes commercial desirable as a result of incentivisation by the public sector body.
- 24.2 Where the Council wishes to establish a development agreement that meets the definition above again careful consideration must be given prior to such an agreement being established so as to ensure that it is compatible with EU law. A development agreement that is not compatible with EU law may be said to be a public works or *Concession Contract* and may therefore be subject to the legislation on public procurement.
- 24.3 For a development agreement to be considered as not triggering the public procurement legislation some or all the following characteristics must be met:
- The proposed development (or a significant part) is to be undertaken at the initiative and autonomous intention of the developer. (This may be particularly likely if the developer already owns or has control of land to be developed);
 - The development agreement is ancillary or incidental to a transfer or lease of land or property from the Council to the developer, and is intended to protect the interests of the Council which is the lessor or otherwise retains an interest in the land or property;
 - The development agreement is based on proposals put forward by the developer, rather than requirements specified by the Council, albeit that these proposals may be sought, and the “winner” chosen by the Council;
 - There is no pecuniary interest passing from the Council to the developer as consideration for undertaking the development, either through direct payment or indirectly, for example by the assumption of obligations such as contributions towards project finance or guarantees against possible losses by the developer;
 - The development agreement does not include specific contractually enforceable obligations on the developer to realise a work or works (even if that work or works is recognised as being the general intent of the parties to the agreement);
 - The development does not consist of or contain works for the direct economic benefit of the Council. The involvement of the Council consists only in the exercise of statutory land-use planning powers.
- 24.4 Where a development agreement cannot be said to meet the criteria defined above a public works or *Concession Contract* must be awarded in accordance with the public procurement legislation.